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No. 04-399

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ITTELLA FOODS, INC.,
Petitioner,

vs.

ZURICH INSURANCE COMPANY and
NORTHERN INSURANCE CO. OF NEW YORK,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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ITTELLA FOODS, INC.

SUPPLEMENTAL BRIEF OF ITTELLA'S FOODS, INC.

I. THE DISTRICT COURT'S RECENT DECISION DENYING NORTHERN'S RULE 60 MOTION DETAILS THE EVIDENCE CONSIDERED BY THE JURY AND TRIAL COURT AND IGNORED BY THE NINTH CIRCUIT

Subsequent to Ittella filing its Petition for Writ of Certiorari, the District Court ruled on Respondent's Rule 60 Motion Re: Breach Of Covenant Of Good Faith And Fair Dealing. This additional opinion is reprinted as Appendix D.

While not directly relevant to Petitioner's challenge to the Ninth Circuit Panel's punitive damage ruling, the decision is worth noting because it details the evidence which led the jury and District Court Judge to find that there was clear and convincing evidence that Respondent had acted with malice, fraud and oppression; evidence which, as the District Court noted, was not even addressed by the Panel. Comparison of this factually detailed and thoroughly reasoned decision with the Panel's factually vacant Memorandum underscores the extent to which the Panel deviated from the mandated standard in punitive damage cases of accepting the factual findings of the District Court unless clearly erroneous. *Cooper Industries Inc. v. Lumberman Tool Group, Inc.*, 532 U.S. 424 [121 S. Ct. 1678] (2001).

The Petition for a Writ of Certiorari should be granted.

DATED: November 1, 2004.

Respectfully Submitted

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